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Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No. _____

WALTER ROBERT DICKSON,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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UNITED STATES OF AMERICA,
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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

To The Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Walter R. Dickson, the Petitioner herein, prays that a writ of certiorari issue to review the judgment of the Fourth Circuit Court of Appeals entered in the above-entitled case on the 13th day of June, 1972.

OPINIONS BELOW

The opinion and judgment of the Fourth Circuit Court of Appeals is printed in Appendix A hereto, Page A-1. The Journal Entry of Judgment of the United States District Court for the Eastern District of Virginia is printed in Appendix A hereto, Page A-2.

JURISDICTION

The judgment of the Fourth Circuit Court of Appeals aforesaid was entered on June 13, 1972. The jurisdiction of this honorable Court is invoked under Title 28, U.S.C. § 1254 (1).

QUESTIONS PRESENTED

A. Whether a "statement of source of title for a new motor vehicle" is a "security" as definied in Title 18, U.S.C. § 2311.

B. Whether the Petitioner is guilty under para. 3, Title 18, U.S.C. §2314, absent any evidence at trial that the Petitioner did, in fact, "transport" a "falsely-made security."

STATUTES INVOLVED

TITLE 18, UNITED STATES CODE

Section 2311

As used in this chapter:

"Aircraft" means any contrivance now known or hereafter invented, used, or designed for navigation of or for flight in the air;

"Cattle" means one or more bulls, steers, oxen, cows, heifers, or calves, or the carcass or carcasses thereof;

"Money" means the legal tender of the United States or of any foreign country, or any counterfeit thereof;

"Motor vehicle" includes an automobile, automobile truck, automobile wagon, motorcycle, or any other self-propelled vehicle designed for running on land but not on rails;

"Securities" includes any note, stock certificate, bond, debenture, check, draft, warrant, traveler's check, letter of credit, warehouse receipt, negotiable bill of lading, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate; certificate of interest in property, tangible or intangible; instrument or document or writing evidencing ownership of goods, wares and merchandise, or transferring or assigning any right, title or interest in or to goods, wares, and merchandise; or in general, any instrument commonly known as a "security", or any certificate of interest or participation in, temporary or interim certificate for, receipt for, warrant, or right to subscribe to or purchase any of the foregoing, or any forged, counterfeited, or spurious representation of any of the foregoing:

"Tax stamp" includes any tax stamp, tax token, tax meter imprint, or any other form of evidence of an obligation running to a State, or evidence of the discharge thereof.

"Value" means the face, par, or market value, whichever is the greatest, and the aggregate value of all goods, wares, and merchandise, securities, and money referred to in a single indictment shall constitute the value thereof.

Section 2314

Whoever transports in interstate or foreign commerce any goods, wares, merchandise, securities or money, of the value of $5,000 or more, knowing the same to have been stolen, converted or taken by fraud; or

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transports or causes to be transported, or induces any person to travel in, or to be transported in interstate commerce in the execution or concealment of a scheme or artifice to defraud that person of money or property having a value of $5,000 or more; or

Whoever, with unlawful or fraudulent intent, transports, in interstate or foreign commerce any falsely made, forged, altered, or counterfeited securities or tax stamps, knowing the same to have been falsely made, forged, altered or counterfeited; or

Whoever, with unlawful or fraudulent intent, transports in interstate or foreign commerce any traveler's check bearing a forged counter-signature; or

Whoever, with unlawful or fraudulent intent, transports in interstate or foreign commerce, any tool, implement, or thing used or fitted to be used in falsely making, forging, altering, or counterfeiting any security or tax stamps, or any part thereof—

Shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

This section shall not apply to any falsely made, forged, altered, counterfeited or spurious representation of an obligation or other security of the United States, or of an obligation, bond, certificate, security, treasury note, bill, promise to pay or bank note issued by any foreign government or by a bank or corporation of any foreign country.

STATEMENT

Petitioner was indicted by the grand jury for the Eastern District of Virginia, Alexandria Division, for violations of Title 18, U.S.C. § 2314, in connection with the alleged transporting through interstate commerce of falsely made and forged securities, each known as a "Statement of Source

of Title for New Motor Vehicle" (hereinafter referred to as "Statement of Source of Title" (see App. B-1)). The indictment contained three counts: Count One charged the transporting in interestate commerce, with intent to defraud, of a Statement of Source of Title dated October 21, 1969, from Fairfax County, Virginia, to Salem, New Jersey; Count two made an identical charge with respect to the transporting of a Statement of Source of Title, dated October 14, 1969, from Fairfax County, Virginia, to Lake County, Ohio; Count Three made an identical charge with respect to the transporting of a Statement of Source of Title, dated October 20, 1969, from Fairfax County, Virginia, to Salem, New Jersey.

On August 11, 1971, Petitioner, upon a plea of not guilty and after a trial to the court, was found guilty of Count Two and was convicted of the interstate transportation of a falsely made and forged security under Title 18, U.S.C. § 2314. He was sentenced to two years' imprisonment and fined $2,500.00. Counts One and Three were dismissed by the court. Petitioner then moved for an arrest of judgment on the grounds that the indictment did not charge an offense under 18 U.S.C. § 2314 in that it failed to allege that Petitioner had knowledge of the false nature of the "Statement of Source of Title." The court vacated the judgment and sentence, setting them aside without prejudice in order for the Government to reindict Petitioner.

Petitioner was reindicted on one count, that count being the same as Count Two in the original indictment with the additional allegation that Petitioner knew that the Statement of Source of Title was falsely made and forged (App. C-1).

On December 17, 1971, Petitioner, upon a plea of not guilty and following a jury trial, was found guilty of the offense of interstate transportation of a forged security under

Title 18, U.S.C. § 2314. He was sentenced to five years' imprisonment. Prior to submitting the case to the jury, the court denied Petitioner's motion for judgment of acquittal.

During the course of the trial, the Government failed to present any evidence whatsoever that the Petitionr did, in fact, "transport" the alleged "forged security." Furthermore, during the course of the trial, the Government failed to present any evidence whatsoever, that the "alleged forged security" had a "value of $5,000 or more."

REASONS FOR GRANTING THIS WRIT

That the Fourth Circuit Court of Appeals has rendered a decision interpreting Title 18, U.S.C. § 2311, and Title 18, U.S.C. § 2314, which is in direct conflict with the decision of the United States District Court of Appeals in the case of *Merrill* v. *United States,* 338 F.2d 763 (1964), and has decided an important question of Federal law which has not been, but should be settled by the Supreme Court of the United States concerning the question of the definition of a "security" as defined in Title 18, U.S.C. § 2311.

In the *Merrill* case, the Appellant was convicted of a violation of § 2314 for transporting a "thing used or fitted to be used in falsely making, forging, altering or counterfeiting any security." The "thing" was a Shell credit card and the issue on appeal was whether the sales invoice produced by such a credit card was a "security" as defined by § 2311. Noting that each of the types of securities specified in § 2311 consisted of a single document which in itself would be sufficient to establish a given right, relationship or property interest, the court concluded that Congress had employed the term "securities" in the "usual commercial sense to refer to instruments in themselves valuable to a thief." The reasoning of the *Merrill* case has recently been reaffirmed and clairfied in a very important way by the fifth circuit in

United States v. *Jones*, 450 F.2d 523 (5th Circuit, 1971). There, the appellant was convicted of a violation of § 2314 for sending two Braniff airline tickets through the mail. The Government had apparently argued that because the airline tickets were redeemable for cash, they would be valuable to a thief. The court stated:

> Congress, in enacting § 2311, clearly manifested its intention to limit the meaning of security to specific commercial instruments and to those documents which commonly pass as securities.

The court then reiterated its definition of security set forth in *Merrill, supra,* but added the caveat:

> It does not follow from that proposition (because the tickets can be redeemed for cash that they are of value to a thief) that anything having value is therefore a security for such an approach reads out of the *Merrill* definition the words 'usual commercial sense' and 'instruments.'

Petitioner respectfully submits that it is impossible to ascribe to Congress an intention to include a "Statement of Source of Title" within the definition of "securities" as it appears in § 2311. The Statement of Source of Title, like a credit card slip, has no value in itself, nor is it negotiable. It is merely evidence as to the existence of an automobile title. An automobile title certificate may well be a security since it has value in itself: it gives the "holder the right to demand and receive property not in his possession." It is also negotiable. It would, therefore, be of value to a thief or a forger. A Statement of Source of Title, however, has no such attributes. And, therefore, specifically under the rationale of the *Merrill* case, is not within the purview of Title 18, U.S.C. § 2311, as it applies to Title 18, U.S.C. § 2314.

Secondly, with reference to whether the Petitioner is guilty under para. 3, Title 18, U.S.C. § 2314, absent any evidence at trial that the Petitioner did, infact, "transport" a "falsely-made security," your Petitioner respectfully submits that we must once again look to the *Merrill* decision: "Section 2314 is a criminal statute . . . which must be strictly construed. . . . An ambiguity in such a statute is not to be resolved by an interpretation to 'embrace an offense not clearly within the law.' Any doubt must be resolved against broadening its scope." *Merrill*, p. 770.

The Government's indictment (App. C-1) states that your Petitioner "did transport, and cause to be transported, in interstate commerce from Fairfax County, Virginia, to Lake County, Ohio, a falsely-made and forged security known as a 'Statement of Source of Title of New Motor Vehicle'. . . ."

As brought out in Petitioner's "Statement," the Government failed to produce any evidence at trial that the Petitioner did, in fact, "transport" the alleged falsely-made security: and furthermore, that the Government failed to produce any evidence whatsoever as to the value of the alleged falsely-made security. Moreover, the indictment fails to state what paragraph of § 2314 the Government was proceeding under.

Reading that section, one must conclude that the Government was either proceeding under paragraph 2, or, in the alternative, under paragraph 3. If the Government was proceeding under paragraph 2, then its case must fail because, as stated aforesaid, there was no evidence whatsoever to indicate that the alleged forged security had a "value of $5,000 or more."

In the alternative, if the Government was proceeding under paragraph 3, their case must still fail because, even though paragraph 3, does not allude to a "value of $5,000 or more," it does, however, direct itself towards one who

with "unlawful or fraudulent intent *transports* in interstate or foreign commerce any falsely-made securities . . ." (emphasis added). And, as stated aforesaid, § 2314 "must be strictly construed" and, in reiteration, the Government failed to prove that your Petitioner did, in fact, "transport" the alleged forged security.

CONCLUSION

For the foregoing reasons, this petition for a Writ of Certiorari should be granted.

Respectfully submitted,

s/T. BROOKE HOWARD

s/WILLIAM E. ASTLE

s/WARREN J. DAVIS
Counsel for Petitioner

APPENDIX A
United States Court of Appeals
FOR THE FOURTH CIRCUIT

No. 72-1141

UNITED STATES OF AMERICA, Appellee,
v.
WALTER ROBERT DICKSON, Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. Albert V. Bryan, Jr., District Judge.
(Argued June 6, 1972. Decided June 13, 1972.

Before BUTZNER, RUSSELL, and FIELD Circuit Judges.

Warren J. Davis and T. Brooke Howard for appellant; George P. Williams, Assistant United States Attorney for the Eastern District of Virginia, (Brian P. Gettings, United States Attorney, on brief) for appellee.

PER CURIAM:

Walter Robert Dickson appeals his conviction for interstate transportation of a falsely made and forged security in violation of 18 U.S.C. § 2314. Finding no error, we affirm.

The definition of a security in 18 U.S.C. § 2311 includes a document "transferring or assigning any right, title, or interest in or to goods, wares, and merchandise . . . ." On consideration of the briefs, record, and argument, we conclude that the district court properly ruled that this definition of a security embraced a "statement of source of title" of a motor vehicle and that the evidence was sufficient to sustain the judgment.

AFFIRMED.

FOR THE
EASTERN DISTRICT OF VIRGINIA—
ALEXANDRIA DIVISION
United States of America
v.
WALTER ROBERT DICKSON
No. 326-71-A
FILED DEC. 17, 1971
Clerk, U. S. District Court, Alexandria, Virginia

On this 17th day of December, 1971 came the attorney for the government and the defendant appeared in person and by counsel.

IT IS ADJUDGED that the defendant upon his plea of Not guilty and verdict of guilty. has been convicted of the offense of Interstate transportation of forged security.
T18 2314 USC.
as charged in the indictment.
and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of five (5) years. Defendant to be given credit for time spent in custody.

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

A True Copy, Teste:
W. Farley Powers, Jr., Clerk
By Betty McFadden

A. V. BRYAN,
United States District Judge.
W. FARLEY POWERS, JR.,
Clerk.

---

[1]Insert "by [name of counsel], counsel" or without counsel; the court advised the defendant of his rights of counsel and asked him whether he desired to have counsel appointed by the court, and the defendant thereupon stated that he waived the right to the assistance of counsel." [2]Insert (1) "guilty and the court being satisfied there is a factual basis for the plea," (2) "not guilty, and a verdict of guilty," (3) "not guilty, and a finding of guilty," or (4) "nolo contendere," as the case may be. [3]Insert "in count(s) number " if required ***ter (1) sentence or sentences, specifying counts if any; (2) whether sentences are to run concurrently or consecutively and, if consecutively, when each term is to begin with reference to termination * * * (more)

APPENDIX B

FOR USE OF VIRGINIA DEALERS ONLY

Required by Chapter 3-2, Acts 1932 and Acts Amendatory Thereof

---

I/We, the undersigned dealer and owner/owners of the motor vehicle described on the reverse side of this form, the purchaser's application for certificate of title, states under oath that the source of their title to the said vehicle as follows:

NAME ..... Falls Church Ford, Inc. .....
(Print name plainly)

Business Address ..... Falls Church, Virginia
(Number Street City or Town County State)

Make of Cars Sold Fords Dealers License No. 1791, 1969
(Must be given)

SOURCE OF OWNERSHIP

Date Received....6-14-69 .... From ..... Ford Motors
(Month Day Year) (Name of Manufacturer or Distributor)

Address of Manufacturer or Distributor....Detroit, Michigan
(Number Street City State)

The vehicle described on the reverse side of this form complies with the requirements of the Motor Vehicle Code of Virginia as to headlights, safety glass in windshield, and windows, brakes, axles, tires, wheels and other safety devices.

Method of payment ..... Cash .....
(Cash, Trade, Conditional Sale, Mortgage, Security Agreement)

Leins, if any, at present time: Amount $.....None .....

Kind of Lein .....

Date of Lein .....

Where Lein recorded .....

Name and Address of Lein holder .....

In this space do not show any lien created by sale to purchaser.

Vehicle cannot be transferred if any lien exists which is an obligation of Dealer.

ASSIGNMENT OF TITLE AND NOTICE OF SALE

Sale Price $..... 2% Tax $.....
(No Trade-in Allowance)

For value received, I/We, hereby sell, assign or transfer unto Mark Collins ..... 1969 Ford .....

Serial Number: 9N58F104785 .....

Address.....39475 Euclid Avenue, Wickliffe, Ohio
Street No. or R.F.D. City or Town State

The Motor Vehicle described on the reverse side of the Application; and I/We hereby warrant the title to said Motor Vehicle, and certify that at time of delivery the same is subject to the following liens or encumbrances, and none other:

1st Lien: Amount $ None....Kind of Lien ..... Date....
Conditional Sale, Deed of Trust, Chattel Mortgage, Security Agreement

In favor of

Name ..... Address .....
Name of Lienholder

2nd Lien: Amount $ None—Kind of Lien ..... Date....
Conditional Sale, Deed of Trust, Chattel Mortgage, Security Agreement

In favor of

Name ..... Address .....
Name of Lienholder

Show above only Liens created as result of sale to purchaser

Valid lien must be secured by conditional sales contract, security agreement, reservation of title contract, deed of trust, or chattel mortgage. A promissory note is not a valid lien and cannot be recorded on title as such.

Falls Church Ford, Inc.
Signature of Dealer

By Robert Grinder, V. Pres.

All answers supplied and completely subscribed and sworn to before me this 14 day of Oct., 1969.

My commission expires 7-13, 1972.

Flory N. Krone
Notary Public

On cars purchased outside of State it is necessary that a Certificate of title or notarized Bill of Sale be attached.

Use typewriter or ink in filling out this blank.

Great care should be taken in stating CORRECT ENGINE and SERIAL NUMBERS on this application as all cars are identified only by these numbers. Serial number is usually found on foot board or dash and on frame. Engine number is found on plate stamped (cut in) on motor. Do not confuse engine number with casting dates and part numbers which are in raised figures.

If in doubt as to your engine and serial number have car examined at a reputable garage or communicate with manufacturer.

Apply to Division for Special Application Forms for Home Made Trailers and Semi-Trailers

APPENDIX C

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division
UNITED STATES OF AMERICA
v.
WALTER ROBERT DICKSON
CRIMINAL No.
SEPTEMBER *1971* TERM—At Norfolk

THE GRAND JURY CHARGES:

On or about October 14, 1969, in the Eastern District of Virginia, WALTER ROBERT DICKSON, President of Bob's Used Cars, with intent to defraud did transport and cause to be transported in interstate commerce from Fairfax County, Virginia, to Lake County, Ohio, a falsely made and forged security known as "Statement of Source of Title for New Motor Vehicle," bearing on the face thereof the date of October 14, 1969, knowing the same to have been falsely made and forged. The following is a photostatic copy of the face of said falsely made and forged document, which document is attached hereto and made a part of this county by reference:

(See page following)

(Violation of Title 18, United States Code, Section 2314)

A TRUE BILL:
FOREMAN

BRIAN P. GETTINGS
United States Attorney
By: .....
David H. Hopkins
Assistant United States Attorney